

amount of the late allocation is \$99,000, computed as follows:  $(.40 \times \$165,000 \text{ plus } \$99,000) / \$165,000 = \text{one}$ .

(iii) The balance of the allocation, \$11,000 (\$150,000 less the timely allocation of \$40,000 less the late allocation of \$99,000) is a timely allocation as of February 1, 1998. The applicable fraction with respect to the trust, as of February 1, 1998, is .355, computed as follows:  $\$60,000$  (the nontax portion of the trust immediately prior to the February 1, 1998 transfer  $(.40 \times \$150,000)$ ) plus \$11,000 (the amount of the timely allocation to the 1998 transfer) /  $\$200,000$  (the value of the trust on February 1, 1998, after the transfer on that date) =  $\$71,000 / \$200,000 = .355$ .

(iv) The applicable fraction with respect to the trust, as of April 15, 1998, is .805 computed as follows:  $\$78,100$  (the nontax portion immediately prior to the allocation  $(.355 \times \$220,000)$ ) plus \$99,000 (the amount of the late allocation) /  $\$220,000 = \$177,100 / \$220,000 = .805$ .

**Example 5. Redetermination of inclusion ratio on ETIP termination.** (i) T transfers \$100,000 to an irrevocable trust. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild, GC, on the termination of T's income interest. The trustee has the power to invade trust principal for the benefit of GC during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates \$100,000 of GST exemption to the trust. In year 4, when the value of the trust is \$200,000, the trustee distributes \$15,000 to GC. The distribution is a taxable distribution. Because of the existence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is .50  $(1 - (\$100,000 / \$200,000))$ .

(ii) In year 5, when the value of the trust is again \$200,000, the trustee distributes another \$15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is  $\$92,500 (\$100,000 - (.50 \times \$15,000))$  and the inclusion ratio applicable with respect to the GST in year 5 is .537  $(1 - (\$92,500 / \$200,000)) = .463$ . Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is effective immediately prior to the transfer.

[T.D. 8644, 60 FR 66903, Dec. 27, 1995; 61 FR 29654, June 12, 1996]

#### § 26.2642-5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable as a result of a cessation, etc. of qualified use under section 2032A(c)) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final, on the later of—

(1) The expiration of the period for assessment with respect to the first GST tax return filed using that inclusion ratio (unless the trust is subject to an election under section 2032A in which case the applicable date under this subsection is the expiration of the period of assessment of any additional GST tax due as a result of a cessation, etc. of qualified use under section 2032A); or

(2) The expiration of the period for assessment of Federal estate tax with respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were timely filed within the period prescribed by section 6075(a).

[T.D. 8644, 60 FR 66903, Dec. 27, 1995, as amended at 61 FR 43656, Aug. 26, 1996]

#### § 26.2652-1 Transferor defined; other definitions.

(a) *Transferor defined*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the Federal estate or gift tax applies. For purposes of this paragraph, a surviving spouse is the transferor of a qualified domestic trust created by the deceased spouse that is included in the surviving spouse's gross estate, provided the trust is not subject to the